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**UTAH LABOR COMMISSION**

**JAMES DEAN WALL,**

**Petitioner,**

**vs.**

**NORTHWEST PIPELINE,**

**Respondent.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 06-0783**

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James Dean Wall asks the Utah Labor Commission to review Administrative Law Judge Marlowe's dismissal of Mr. Wall's claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12, §34A-2-801(3) and §34A-3-102.

**BACKGROUND AND ISSUE PRESENTED**

Mr. Wall worked for Northwest Pipeline, Inc. from 1988 until 1994. On October 19, 2000, he filed an application for hearing with the Commission to compel Northwest to pay medical and disability benefits for diseases allegedly caused by Mr. Wall's exposure to chemicals at Northwest.

Judge Hann conducted a formal evidentiary hearing on Mr. Wall's claim and then issued her decision on July 29, 2002. The decision catalogued Mr. Wall's chemical exposures at Northwest and also listed Mr. Wall's medical complaints, then reviewed medical opinions from physicians who had treated or examined Mr. Wall. Based on these medical opinions, Judge Hann ruled that Mr. Wall's exposure to chemicals at Northwest had not caused any of his medical problems. Judge Hann therefore denied Mr. Wall's claim against Northwest.

Since the date of Judge Hann's denial of Mr. Wall's first claim, he has filed five subsequent applications for hearing seeking benefits from Northwest. Each of these applications has been based on the same allegations as his first application. Each application has been dismissed under the legal principle of claim preclusion—that branch of the doctrine of *res judicata* that bars re-litigation of claims that have already been litigated and decided.

The matter now before the Commission is the latest of Mr. Wall's claims against Northwest. This claim once again seeks benefits from Northwest for the same alleged chemical exposures and the same alleged medical problems that were considered and decided by Judge Hann's decision of July 29, 2002. And, once again, Judge Marlowe has summarily dismissed the claim under the principle of claim preclusion.

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In requesting Commission review of Judge Marlowe's decision, Mr. Wall asserts that this claim differs from his earlier claim because he is now seeking benefits for occupational diseases, whereas the first claim sought benefits for an industrial injury. Mr. Wall also states that, regardless of the outcome of this matter, he will continue to file applications for hearing with the Commission claiming benefits from Northwest for the same alleged chemical exposures.

**DISCUSSION**

As already noted, Judge Marlowe dismissed Mr. Wall's most recent application for hearing under the principle of claim preclusion. In *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988), the Utah Supreme Court discussed the requirements for application of claim preclusion:

Claim preclusion bars a cause of action only if the suit in which that cause of action is being asserted and the prior suit satisfy three requirements. First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits. (Citations omitted.)

Mr. Wall's current claim satisfies each of these elements. The first and third elements are met because the earlier litigation involved the same parties and resulted in a final judgment on the merits.

As to the second element, the Commission notes Mr. Wall's argument that different claims have been raised-- industrial accident in the earlier litigation; occupational disease in the current litigation. However, the record of the earlier litigation contradicts Mr. Wall's argument and establishes that Mr. Wall's occupational disease claim was raised and considered in that litigation.

But even if the Commission were to accept Mr. Wall's argument that he did not present his occupational disease claim during the earlier litigation, he would still be precluded from raising that claim now. This is because the principle of claim preclusion applies not only to claims that actually **were** presented in prior litigation, but also applies to claims that **"could and should have been raised"** in the earlier litigation. *Madsen*, Ibid. Commission practice allows injured workers to claim benefits under alternative theories of accidental injury and occupational disease. Thus, Mr. Wall "could have" raised his occupational disease claim in the earlier proceeding. The Commission therefore turns to the question of whether he "should have" raised the claim in the earlier proceeding.

In *American Estate Management Corp. v. International Investment and Development Corp.*, 986 P.2d 765, 768 (Utah App. 1999) (internal quotation marks and citations omitted), the Utah Court of Appeals has summarized the law in Utah and other jurisdictions on the question of when a claim "should have" been raised in earlier proceedings:

Claim preclusion reflects the expectation that parties who are given the capacity to present their entire controversies shall in fact do so. If a party fails, purposely or

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negligently, to make good his cause of action by all proper means within his control, he will not afterward be permitted to deny the correctness of that determination, nor to relitigate the same matters between the same parties . . . .

Plaintiffs were not entitled to pursue their claim of ownership through piecemeal litigation, offering one legal theory to the court while holding others in reserve for future litigation should the first prove unsuccessful.

In this case, Mr. Wall had the opportunity in the first adjudicative proceeding to present all theories he believed supported an award of benefits. He is not entitled to pursue his claim for benefits "through piecemeal litigation, offering one theory to the court while holding others in reserve." The Commission therefore concludes that all necessary elements are established for dismissal of Mr. Wall's current occupational disease claim on the basis of claim preclusion.

The Commission now turns to the issue of Mr. Wall's continued filings of claims that have already been decided by Judge Hann's decision of July 29, 2002. So far, Mr. Wall has filed five such claims. In each instances, Northwest has been forced to employ legal counsel to respond to these legally frivolous claims. Likewise, the resources of the Commission's adjudicative system have been diverted from other cases in order to deal with Mr. Wall's applications.

The Utah Administrative Procedures Act permits the Commission's Administrative Law Judges to take appropriate measures to preserve the integrity of the hearing process. In light of Mr. Wall's history of filing frivolous applications and his stated intention of continuing to do so in the future, the Commission instructs the Adjudication Division to review all applications filed by Mr. Wall in the future and promptly dismiss any of those applications that raise claims that have already been adjudicated. Northwest shall be excused from filing answers to any of Mr. Wall's future applications unless instructed otherwise by the Adjudication Division.

**ORDER**

The Commission affirms Judge Marlowe's decision. It is so ordered.

Dated this 9<sup>th</sup> day of March, 2007.

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Sherrie Hayashi  
Utah Labor Commissioner